

HIRING SKILLED WORKFORCE FROM ANOTHER EMPLOYER COULD CONSTITUTE A SALE OF A BUSINESS, SUPREME COURT OF CANADA FINDS

Ajax (Town) v. CAW, Local 222 [2000] S.C.C. 23

Facts

The Town of Ajax entered into a contract with Charterways Transportation Limited ("Charterways") under which Charterways would operate the Town's municipal transit system. The Town owned and supplied the buses and virtually all other tangible assets used to operate the transit system. The Town controlled the routes, schedules, rates and fare collection. Charterways provided and coordinated the drivers, mechanics and cleaners who operated the transit system. The drivers, mechanics and cleaners were represented by the CAW, Local 222. At the end of 1992, the Town terminated its contract with Charterways and commenced operating the transit system itself. Charterways laid off all of the drivers, mechanics and cleaners who had been involved in the transit operation, and a number of these individuals were hired by the Town.

Ontario Labour Relations Board, [1994] O.L.R.B. Rep. 1296

The OLRB concluded that a sale of a business had occurred within the meaning of section 64 [now section 69] of the Ontario Labour Relations Act.

Divisional Court (1995), 95 C.L.L.C. 210-040

In a unanimous decision, the Ontario Divisional Court quashed the OLRB's decision on the ground that it was patently unreasonable in two respects.

First, the Divisional Court found that it was patently unreasonable to conclude in the circumstances of the case that there had been a sale or transfer. In particular, the Court noted that the fact that the dismissed Charterways employees were "convenient" for Ajax to hire did not support a conclusion that Charterways "relinquished" or "conveyed" those employees to Ajax such that a sale occurred.

Second, the Divisional Court found that the OLRB had reached a clearly irrational conclusion in finding that by hiring the dismissed Charterways employees, Ajax had acquired a "part" of Charterways' business. The Divisional Court noted that it could not be concluded that the employees hired by Ajax constituted a "crucial" or "essential" element of Charterways' business such that they became a part of Charterways' business within the meaning of section 64.

Ontario Court Of Appeal (1998), 41 O.R. (3rd) 426

A unanimous panel of the Court of Appeal reversed the Divisional Court's decision, finding that the OLRB's decision was not patently unreasonable.

Goudge, J., speaking for the Court, disagreed with both of the Divisional Court's conclusions. First, the Court of Appeal concluded that when Ajax hired the former Charterways employees, it could be concluded that Charterways had conveyed those employees to Ajax within the meaning of section 64. The Court of Appeal noted that the statutory definition of a sale is inclusive and is to be given a broad and liberal interpretation. Furthermore, the Court noted that a transfer is not required to take any particular legal form nor take place by way of a legal transaction. The Court of Appeal concluded that the Town's acquisition of Charterways' skilled and experienced workforce represented a transfer of that workforce from Charterways to Ajax.

Second, the Court of Appeal disagreed with the Divisional Court on the issue of whether Ajax acquired a "part" of Charterways' business. The Court of Appeal noted that the OLRB had found that the scope of Charterways' business for Ajax consisted primarily of the provision of a skilled workforce. Accordingly, the workforce could be considered the most valuable asset of Charterways' business. In acquiring the skilled workforce, Ajax also acquired continuity and stability. Because Ajax acquired the work formerly done by the employees, the employees themselves, in addition to the continuity, experience and stability of the workforce, there was a reasonable basis to conclude that Charterways transferred a significant part of its business to Ajax.

Supreme Court Of Canada, [2000] S.C.C. 23

The Supreme Court of Canada (Bastarache, J, L'Heureux-Dubé, and Binnie, J.J. dissenting) dismissed the appeal, agreeing with the reasons of Goudge, J.A. in the Ontario Court of Appeal.